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ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

And TRACY WAXENFELTER,

Plaintiff-Intervenor

v.

FRED MEYER STORES, INC.,

Defendant.

CIVIL ACTION NO. CV08-0208 HA

(PROPOSED) CONSENT DECREE

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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I. INTRODUCTION

1. This action originated with a discrimination charge filed by Tracey Waxenfelter with the U.S. Equal Employment Opportunity Commission (“EEOC”) in Seattle, Washington on May 31, 2006. Waxenfelter alleged that Fred Meyer Stores, Inc. (hereinafter “Fred Meyer”) subjected her to harassment because of her sex and retaliated against her in violation of §§ 703 and 704 of Title VII, 42 U.S.C. § 2000e-2(a) and -3(a) (“Title VII”).

2. The EEOC sent Fred Meyer a Letter of Determination with a finding of reasonable cause that it had violated Title VII dated August 2, 2007 based on Waxenfelter’s charge of discrimination. The EEOC’s Letter of Determination included a finding that similarly situated female employees were also subjected to harassment because of their sex.

3. The EEOC filed this lawsuit on February 21, 2008, in the United States District Court for the District of Oregon on behalf of Waxenfelter and similarly situated individuals, alleging that from at least October 2004 until January 2006, Fred Meyer subjected Waxenfelter and similarly situated individuals to harassment because of sex and then retaliated against Waxenfelter after she complained of sexual harassment.

4. The parties want to conclude fully and finally all claims arising out of the EEOC’s complaint and the charge of discrimination filed with EEOC by Waxenfelter. They enter into this Consent Decree to further the objectives of equal employment as set forth in Title VII.

**II. NONADMISSION OF LIABILITY AND NONDETERMINATION
BY THE COURT**

5. This Consent Decree is not an adjudication or finding on the merits of this case and shall not be construed as an admission by Fred Meyer of a violation of Title VII. Fred Meyer expressly denies any wrongdoing or liability.

III. JURISDICTION AND VENUE

6. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a. The employment practices alleged to be unlawful in the EEOC's complaint filed herein occurred within the jurisdiction of the United States District Court for the District of Oregon.

IV. SETTLEMENT SCOPE

7. This Consent Decree is the final and complete resolution of all Title VII allegations of unlawful employment practices contained in the complaint the EEOC filed on behalf of Waxenfelter and similarly situated individuals, including all claims by the parties for attorney fees and costs and is binding and final as to all such issues and claims.

V. MONETARY RELIEF

8. In settlement of this lawsuit, Fred Meyer agrees to provide \$285,000 to Tracey Waxenfelter in two separate checks: one to Ms. Waxenfelter for \$187,221.63 and one to her attorney Dana Sullivan for \$97,778.37, \$100,000 to Carol Ewing, and \$100,000 to Anita Fleet,

payment of which is to be provided directly to Ms. Ewing and Ms. Fleet by certified mail to an address to be provided, within ten days of the date the court enters this consent decree, with copies to the EEOC. Payment to Ms. Waxenfelter will be made pursuant to the Release and Settlement Agreement entered into between Ms. Waxenfelter and Fred Meyer.

VI. INJUNCTIVE AND OTHER RELIEF

A General Provisions

9. Fred Meyer, its officers, agents, managers, assistant managers and other supervisors and all human resource professionals who provide advice and assistance to the foregoing individuals are enjoined from engaging in practices which constitute harassment based on an employee's sex, and which constitute retaliation for an individual engaging in protected EEO activity. In recognition of its obligations under Title VII, Fred Meyer will institute the policies and practices set forth.

B. Anti-Discrimination Policies and Procedures

10. Fred Meyer shall prevent harassment, discrimination, and retaliation. Fred Meyer shall provide training to its employees, managers, and supervisors to understand its Equal Employment Opportunity ("EEO") policies and how those policies define and identify what constitutes harassment, discrimination and retaliation, and shall make managers and supervisors personally accountable of its EEO policies.

11. Within ninety (90) days of the date of the effective date of this Consent Decree, Fred Meyer shall: (a) institute an EEO policy which adequately prohibits harassment, discrimination, and retaliation, addresses Fred Meyer's obligation to provide a work environment

free of harassment, discrimination, and retaliation for its employees, and affirms its commitment not to retaliate against any employee for engaging in protected EEO activity; and (b) distribute its EEO policy to all present and future Oregon City, Johnson Creek and Sandy store employees, both management and non-management.

C. Training

12. Within 120 days of the date of entry of this Consent Decree, Fred Meyer shall present to all managers, assistant managers, and supervisors at the Oregon City, Johnson Creek and Sandy stores, and Gina Watkins and Terri Robinson, no less than three (3) hours of face-to-face training by a qualified trainer on harassment, employment discrimination, and retaliation for engaging in protected EEO activity. The EEOC will have an opportunity to view the training materials prior to the training date.

Annually thereafter for the life of this Consent Decree, Fred Meyer will require: (1) all managers, assistant managers and supervisors at the Oregon City, Johnson Creek and Sandy stores, and Gina Watkins and Terri Robinson to complete three (3) hours of face-to-face training by a qualified trainer on harassment, employment discrimination and retaliation.

D. Expungement of Records

13. Fred Meyer shall not disclose any information or make reference to any charge of discrimination that is the subject of the lawsuit or this lawsuit in responding to employment reference requests for information about Waxenfelter, Ewing, or Fleet.

14. Fred Meyer shall expunge from the personnel files of Waxenfelter, Ewing, and Fleet any reference to their charges of discrimination against Fred Meyer and this lawsuit. If

Waxenfelter, Ewing, or Fleet wishes to do so, Fred Meyer shall permit them to review their personnel files to ensure that all such references have been expunged. Fred Meyer shall not add any information or references to their personnel files regarding this charge of discrimination and this lawsuit after such references have been expunged.

E. Policies Designed to Promote Supervisor Accountability

15. Fred Meyer shall specifically advise Gina Watkins, Terri Robinson and all managers and supervisors at the Oregon City, Johnson Creek, and Sandy stores of their duty to ensure compliance with its EEO policies, and to report any incident or complaint of harassment, discrimination, or retaliation, of which they become aware. If such a manager or supervisor violates Fred Meyer's EEO policies, he or she may be subject to discipline up to and including termination and compensation may be affected. Fred Meyer shall appropriately discipline any such manager and supervisor who retaliate against any employee for reporting or relaying any incident of discrimination or retaliation under Fred Meyer's EEO policy, or for participating in or conducting an investigation of such an incident.

16. Fred Meyer shall include "commitment to equal employment opportunity" or similar designation as a criterion for qualification for evaluation of supervisory positions at its Oregon City, Johnson Creek and Sandy stores.

F. Reporting

17. Fred Meyer shall report in writing to the EEOC beginning six (6) months from the date of the entry of this decree, and thereafter every six months for the duration of the decree the

following information:

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- a. Certification of the completion of training and list of attendees set forth in Paragraph 12 above, and a list of all attendees including job titles.
- b. Certification that its EEO policy has been sent to all current and newly hired employees as described in Paragraph 11 above.
- c. A copy of its EEO policy and a list of any changes, modifications, revocations or revisions to its EEO policies and procedures if any, which concern or affect the subject of discrimination and retaliation; and
- d. A summary of all harassment, discrimination and retaliation complaints at Oregon City, Johnson Creek and Sandy stores if any, filed by employees, identified by name, and the resolution of each complaint.

G. Posting

18. Fred Meyer shall post a Notice, attached as Exhibit A to this Consent Decree. The Notice shall be posted on a centrally located bulletin board at Fred Meyer's Oregon City, Johnson Creek and Sandy stores for the duration of the Consent Decree.

VI. ENFORCEMENT

19. If the EEOC determines that Fred Meyer has not complied with the terms of this Decree, the EEOC will provide written notification of the alleged breach. The EEOC will not petition the Court for enforcement of the decree for at least twenty (20) days after providing written notification of the alleged breach. The 20-day period following the written notice shall be used by the parties for good faith efforts to resolve the dispute, or for Fred Meyer to cure the breach. In those cases where it would take longer than twenty (20) days to cure the breach, Fred

Meyer may have such additional time as may be necessary by agreement with the EEOC so long as Fred Meyer takes all reasonable efforts to cure the breach within the twenty (20) day period.

VIII. RETENTION OF JURISDICTION

20. The United States District Court for the District of Oregon shall retain jurisdiction over this matter for the duration of the decree.

IX. DURATION AND TERMINATION

21. This Decree shall be effect for two (2) years from the date the Court enters this Decree. If the EEOC petitions the Court for breach of the Decree, and the Court finds Fred Meyer to be in violation of the terms of the Decree, the Court may extend the duration of the Decree.

X. CONCLUSION

22. The parties are not bound by any provision of this decree until it is signed by authorized representatives of each party and is entered by the Court.

Dated this 2nd day of December, 2008.

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